



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Ms. Dennie M. Feldman
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12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR94-880

Dear Ms. Feldman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23433.

The Clear Creek Independent School District (the "district"), which you represent, has received a request for "copies of audio tapes that were recorded during a series of interviews" regarding a dispute between a district employee and the parent of a student. You have submitted for our review transcripts of the requested audio tapes. You contend that the requested information may be withheld pursuant to sections 552.026 and 552.114 of the Government Code (formerly V.T.C.S. article 6252-17a, sections 3(a)(14) and 14(e)). We agree.

Section 552.026 of the Open Records Act incorporates the requirements of the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. Open Records Decision No. 431 (1985). FERPA provides as follows:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records" are records that

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). In this case, release of any of the information contained on the tape recordings would tend to identify the student; you may therefore withhold the requested information in its entirety. *See* Open Records Decision No. 294 (1981) (concluding that if information pertains to a relatively small group where a student could be identified, a governmental body must withhold the entire record).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 23433

Enclosures: Submitted documents

cc: Ms. Beatrice Mladenka-Fowler
1529 Heights Boulevard
Houston, Texas 77008-4218
(w/o enclosures)

¹We do not address in this opinion what due process rights, if any, the district employee who is represented by the requestor has in the requested records. We address only the availability of this information to the general public.